

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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March 7, 2011

Dear Interested Party

Attached is a copy of Current Legal Digest (CLD) Number 1079 for your information and review. This CLD contains one new annotation, two revisions to existing annotations, and six deletions of existing annotations. After review, please submit any questions, comments, or suggestions for changes by April 6, 2011. You may complete the electronic CLD Comments Form at <http://www.boe.ca.gov/sutax/cld/cldmail.htm>, or mail your written comments to:

Board of Equalization  
Annotation Coordinator, MIC:50  
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Please note, the new annotations, and/or suggested revisions of existing annotations, contained in the attached CLD are drafts and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After review of the final version by the Board's Legal Division, they are printed in the Business Taxes Law Guide. At that time, the CLD becomes obsolete.

A handwritten signature in blue ink, reading "Christine Bisauta", is positioned above the printed name and title.

Christine Bisauta  
Acting Assistant Chief Counsel

Attachment: Current Legal Digest 1079

CALIFORNIA STATE BOARD OF EQUALIZATION

CURRENT LEGAL DIGEST NO. 1079

March 7, 2011

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**Delete** Annotation 170.0700, **Willfully Fails to Pay – Defined**, (5/1/91) because the backup letter, a judgment from a bankruptcy court, is not a written opinion of the Board’s legal staff. It is a cover letter to a court decision and it is the court decision that was inappropriately annotated. Annotations must be based on written opinions of BOE legal staff and not from any other source.

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**Delete** Annotation 360.0160, **Meals at Children’s Camps**, (11/9/51) because it has been fully incorporated into the applicable regulation.

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425.0239 Cerebrospinal Fluid (CSF) Drainage System and Replacement Drainage Bags. Where a CSF drainage system and a drainage bag are attached to and operate together with a catheter that is designed to be surgically inserted, pursuant to subdivision (a) of Revenue and Taxation Code section 6369, into an artificial opening created in the lateral ventricles of a patient’s brain or a patient’s lumbar subarachnoid space to drain CSF from the patient following the surgery, the devices included in this integrated unit qualify as “ostomy appliances and related supplies” pursuant to paragraphs (2) and (4)(C) of subdivision (b) of Regulation 1591.1. The sales of any of these devices, including sales of replacement drainage bags, are not subject to tax under the Sales and Use Tax Law. 10/5/2010.

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Revise Annotation 495.0446 to make consistent with the backup opinion. **Sale on Approval.** The Commercial Code section 2401 provides that, if goods are delivered goods and may be returned by the buyer even though they conform to the contract, the transaction is a sale on approval if the goods are delivered primarily for use. and, unless otherwise agreed, title does not pass to the buyer until acceptance. Under a sale on approval, unless otherwise agreed, although the goods are identified to the contract, the title doesn’t pass to the buyer until acceptance. If the seller reports the sale on approval as a taxable sale in the period in which delivery is made, and the buyer rejects the goods in a later period, a claim for refund filed timely should be approved with credit interest computed from the period in which payment was made. 10/10/75. (Am. 2011)

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**Revise** Annotation 495.0847 for clarification. **Delivery to In-State Processor.** A taxpayer sells products to a buyer who is not located or registered in California. At the buyer’s request, taxpayer ships the product from its out-of-state plant or from its California plant to a company in California, which will perform further processing of the product for the buyer. The processor subsequently ships the processed product to the buyer’s customer. The buyer’s customer may be the end user or it may resell the product. The buyer’s customer may be located in California or it may be located out of this state.

**Note:** The new proposed annotations contained in this CLD are drafts and may not accurately reflect the text of the final annotation.



In all variations, the taxpayer is not delivering the product to the end user, but to a third party who will perform further processing. The processor, in turn, will later deliver the property either to the end user or to a reseller. Therefore, section 6007 does not apply to this taxpayer. buyer is purchasing taxpayer's products for resale. Taxpayer has no tax liability unless the second paragraph of section 6007 applies. If the taxpayer documents the fact that it shipped the product to a California processor on behalf of the buyer, the taxpayer is not subject any tax liability. The processor, however, may have liability under the second paragraph of section 6007. 9/15/94. (Am. 2011)

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**Delete** Annotation 550.1434, **Student Meals**, (2/17/93) because it is incorrect.

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**Delete** Annotation 570.0920, **Intent to Use in State**, (10/5/64) because it misstates the rule regarding "intent to use in state."

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**Delete** Annotation 585.0270, **Transfer to Living Trust**, (5/30/91) because it conflicts with RTC section 6285.

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**Delete** Annotation 585.0275, **Transfer to Revocable Grantor Trust**, (3/25/92) because it conflicts with RTC section 6285.

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